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COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Applications of)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BRCT-940407KF
)	
For Renewal of License of Station)	
WTVE(TV), Channel 51)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS)	File No. BPCT-940630KG
CORPORATION)	
)	
For Construction Permit for a)	
New Television Station On)	
Channel 51, Reading, Pennsylvania)	

**READING BROADCASTING, INC.'S MOTION TO COMPEL
ANSWERS TO INTERROGATORIES AND RESPONSES TO
REQUESTS FOR PRODUCTION OF DOCUMENTS DIRECTED
TO ADAMS COMMUNICATIONS CORPORATION**

Respectfully submitted,

READING BROADCASTING, INC.

By:

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April 26, 2000

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SUMMARY

The abuse of process added issue was recently refined and restated to present the question of whether, at the time it filed its competing application (“Application”), Adams had a bona fide intent to construct and operate a television station at Reading, Pennsylvania. Memorandum Opinion and Order, FCC 00M-19, released March, 6, 2000 (specifically: “whether the principals of Adams Communications Corporation had, and continue to have, from June 30, 1994, to the present, a bona fide intention to construct and operate a television broadcast station at Reading, Pennsylvania.”)

The discovery in dispute bears particularly on this issue. Specifically, RBI sought evidence of the scope and extent of Adams’ due diligence in preparation of its Application. With respect to this discovery, where Adams has responded, the responses appear to be incomplete. See Rule 1.323(b); 1.325(a)(2) (the Commission’s Rules require that discovery must be answered in full; in that regard, an incomplete or evasive answer is deemed a failure to answer.) In other instances, Adams has objected to the discovery as being “beyond the scope of the issues in this proceeding.” It is axiomatic, however, that Adams’ pre-filing conduct is relevant and material to determining Adams’ intent at the time the application was filed. Accordingly, Adams’ should be required to amend its responses where appropriate, and Adams’ objection should be overruled. Adams should be ordered to respond, in full, to the discovery requested.

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Channel 51, Reading, Pennsylvania)	

To: Administrative Law Judge Richard L. Sippel

**READING BROADCASTING, INC.'S MOTION TO COMPEL
ANSWERS TO INTERROGATORIES AND RESPONSES TO
REQUESTS FOR PRODUCTION OF DOCUMENTS DIRECTED
TO ADAMS COMMUNICATIONS CORPORATION**

Reading Broadcasting, Inc. ("RBI"), by its counsel, pursuant to Sections 1.323 and 1.325 of the Commission's Rules, hereby moves for an Order compelling Adams Communications Corporation ("Adams") to fully answer RBI's Interrogatories and respond to Requests for Production of Documents. Counsel for the Enforcement Bureau of the Federal Communications Commission advises RBI that it concurs with this Motion.

On April 3, 2000, RBI with the concurrence of the Enforcement Bureau served Adams with Interrogatories and Requests for Production of Documents. The overall purpose of this discovery was to obtain evidence related to the added abuse of process issue.

On April 19, 2000, Adams served its Answers and Objections to the Interrogatories and produced documents responsive to some of the Requests.¹ A number of Adams' responses are, however, incomplete. In addition, with respect to certain key Interrogatories and document requests, Adams has interposed an objection in lieu of a response. As demonstrated below, Adams' objections are improper and complete answers to the discovery sought must be provided.

ARGUMENT

A. Adams' Objections Must Be Overruled

1. The Document Requests

Document Request 13:

[Produce] every document that concerns or relates to the preparation of your application for the Reading, Pennsylvania construction permit, including, but not limited to:

a. all bank letters, financial commitments (including balance sheets provided by shareholders of Adams) and other financial documents (including, but not limited to, capital calls, capital contributions, loans, or other sources of financing) with the dollar amounts unexpurgated;

b. all budgets, draft budgets and documents used or relied upon in preparing such budgets and draft budgets;

¹ Complete copies of the Document Requests, Interrogatories, and Adams' Responses thereto are attached hereto.

c. all documents relating to the transmitter site proposed in your application or in any other potential transmitter site considered for the application;

d. all documents relating to any potential studio site considered for the application;

e. all documents relating to staffing and/or recruitment sources for the proposed station; and

f. all drafts of the application and documents concerning or relating to such drafts.

Adams' Response:

Adams objects to this request as beyond the scope of the issue and beyond the permissible bounds of discovery.

Argument

This document request seeks the production of documents relating to Adams' actions in preparation of its Application. As noted above, Adams' pre-filing conduct is clearly relevant and material to the issue of Adams' intent at the time its Application was filed and, therefore, within the scope of the added issue. Adams' objection that the document request is beyond the scope of the issue should, therefore, be overruled.

Since the Commission's Rules allow discovery of any matters, including the production of any documents, "which is relevant to the hearing issues," this request to produce documents relating to Adams' actions in the preparation of its Application is within the permissible bounds of discovery. Adams' objection that the document request is beyond the scope of permissible discovery should, therefore, be overruled.

2. Interrogatories

Interrogatory 20:

Describe with particularity everything that you have done to challenge, contest, oppose, or otherwise object to "home shopping" programming.

Adams' Response:

Adams prepared and submitted its application for Channel 51 in Reading, Pennsylvania.

Interrogatory 21:

With respect to each and every undertaking described in response to the foregoing Interrogatory:

- a. Give the date of the undertaking;
- b. Identify everyone who was involved therein and/or responsible therefor and summarize their qualifications therefor;
- c. State the itemized costs and expenses therefor;
- d. Identify every communication to which you were a party and which concerned or related to one or more of these undertakings and for each communication summarize its substance;
- e. Identify every document in your possession, custody, or control, which concerns or relates to one or more of these undertakings.

Adams' Response:

See the Answers to Interrogatory Nos. 22 and 23.

Interrogatory 22:

Describe with particularity everything you did prior to filing your application in this matter to prepare your application (including, but not limited to, efforts to locate sources of potential programming, financing, studio sites and transmitter sites) for the Reading, Pennsylvania construction permit.

Adams' Response:

Adams objects to this Interrogatory. The Interrogatory is beyond the scope of the issues in this proceeding.

Interrogatory 23:

With respect to each and every undertaking described in response to the foregoing Interrogatory:

- a. Give the date of the undertaking;
- b. Identify everyone who was involved therein and/or responsible therefor and summarize their qualifications therefor;
- c. State the itemized costs and expenses;
- d. Identify every communication to which you were a party and which concerned or related to one or more of these undertakings and for each communication summarize its substance;
- e. Identify every document in your possession, custody, or control, which concerns or relates to one or more of these undertakings.

Adams' Response:

Adams objects to this Interrogatory. The Interrogatory is beyond the scope of the issues in this proceeding.

Argument

As it did in response to Request for Production 13, Adams once again interposes the objection that any discovery relating to Adams' actions in preparation of its Application are beyond the scope of the added issue. As noted above, Adams' pre-filing conduct is clearly relevant and material to the issue of Adams' intent at the time the application was filed and, therefore, within the scope of the added issue. Adams' objection that such discovery is beyond the scope of the

issue should, therefore, be struck and Adams ordered to answer these Interrogatories.

B. Adams' Answers Are Incomplete

1. Document Requests

Document Request 1:

Every document that concerns or relates to research conducted by you prior to filing your application in this matter as to potential construction permit applications in competition with license renewal applications for television stations broadcasting "home shopping" programming.

Adams' Response:

Adams has not responded to this request simply because Adams does not understand it as worded.

Argument

Adam's protestations aside, in the context of the added issue, the Request clearly seeks the production of documents concerning or relating to research performed by Adams, prior to filing its Application, as to other potential competitive applications for television stations broadcasting "home shopping" programming. In other words, all documents which show or relate to anything Adams did, prior to the time it filed its application for Reading, Pennsylvania, to investigate home shopping stations and their relative markets.

Document Request 2:

Every document that concerns or relates to your efforts prior to filing your application in this matter to prepare a potential application (including, but not limited to, efforts to locate sources of potential programming, financing, studio sites and transmitter sites) for a television construction permit (other than in Reading, Pennsylvania).

Adams' Response:

Adams objects to this request as beyond the scope of the issues and beyond the permissible bounds of discovery. Adams also notes that the scope of the request (which refers to “prepar[ing] a potential application”) is not at all clear. To the extent that this request seeks evidence that Adams did initiate the preparation of an application for a new construction permit for a television station in Marlborough, Massachusetts – a fact which has been the subject of testimony already – Adams is providing herewith non-privileged representative documents demonstrating that fact.

Argument

First, as to Adams' objections, the discovery seeks evidence of Adams' pre-filing conduct and is therefore relevant and material to the issue of Adams' intent. Thus, for the same reasons set forth in Section B, above, these objections should be overruled.

Second, there is no ambiguity. The term “potential application” simply references any “application” that Adams considered but did not actually file. Thus, the Requests ask for the production of all documents concerning or relating to efforts undertaken by Adams in anticipation of filing an application that, ultimately, was not filed. While the material produced related to preparing for the Marlborough, Massachusetts, application is responsive, the Request is broader than just that potential application and should be answered accordingly.

Third, with respect to the documents that Adams has provided, by its own admission, it has produced only “representative” documents. The Request, and the Rules, require the production of all responsive documents. Adams should provide all responsive documents.

Finally, Adams has refused to produce some responsive documents on the basis of privilege; Adams, however, has failed to identify such documents as required in the instructions accompanying the request² or to otherwise describe them in a manner that would enable one to determine the propriety of assertion of privilege. At a minimum, Adams should be required to prepare a log of such documents as it claims are privileged and to produce such documents to the Judge for *in camera* inspection and determination.

Document Requests 6:

6. Every document upon which you rely for, or that you contend supports, your conclusion prior to filing your application in this matter that WTVE's programming was not addressing the public interest and needs of the Reading, Pennsylvania community.

Adams' Response:

Adams believes that all documents previously produced by Reading Broadcasting, Inc. ("RBI") concerning the programming of Station WTVE(TV) during the 1989-1994 license term are responsive to [this request] as worded. Since those documents are already in the possession of RBI, Adams is not including additional copies herewith.

² Instruction D provides that:

For any document you withhold because of a claim of privilege or other protection, state:

- (a) the reason for withholding the document; and
- (b) a brief description of the document, including:
 - (i) the date of the document;
 - (ii) the name(s) of its author(s) and an identification by employment and title of each such person;
 - (iii) the name of each person to whom the original or copies of the document were sent, or had access to or custody of the document, together with an identification of each such person; and
- (iv) the subject matter of the document.

Argument

Adams has apparently misunderstood the thrust of this Request. In this Request, RBI is seeking the production of those documents which Adams relied on in reaching its conclusion, prior to filing its application, that WTVE's programming was not addressing the public interest and needs of the Reading, Pennsylvania, community. Since the documents which Adams refers to in its response were apparently not reviewed by Adams until after it had filed its Application, they cannot possibly have been relied on by Adams prior to the time it filed its Application. RBI, therefore, requests an Order compelling Adams to appropriately and fully respond to the Request.

2. Interrogatories

Interrogatory 1:

Describe with particularity everything you did prior to filing your application in this matter to research potential markets for potential construction permit applications in competition with license renewal applications for television stations broadcasting "home shopping" programming, including the identity of each research source used and the information obtained from each research source.

Adams' Response:

Adams understands that, when this Interrogatory refers to "research [of] potential markets for potential construction permit applications in competition with license renewal applications for television stations broadcasting 'home shopping' programming", it means "identify the communities of license of television stations broadcasting 'home shopping' programming and the dates on which the next license renewal application for those stations were due to be filed." Howard N. Gilbert requested the law firm of Bechtel & Cole, Chartered ("B&C") to provide him with a list of television stations broadcasting home shopping programming. In response, B&C provided him with that information.

Argument:

In its answer, Adams has simply rewritten the Interrogatory to better suit its answer. The Interrogatory asks Adams to specify what research it did with respect to potential “home shopping station” markets, not, as Adams has rewritten, for what it did simply to identify such markets. Certainly identifying such markets was a preliminary first step; however, the Interrogatory seeks to discover what Adams did to research such markets after they had been identified. Adams should be ordered to provide a complete answer to this Interrogatory.

Interrogatory 2:

The complete text of the Interrogatory and Answer is attached hereto. Due to the length of the length of the Interrogatory and Answer, they are incorporated herein by reference.

Interrogatory 2 merely seeks additional detail with respect to the answer to Interrogatory 1. Adams’ response merely provides the detail relevant to its answer to the Interrogatory as rewritten. Thus, when it provides a full answer to Interrogatory 1, Adams should also provide the additional detail sought in Interrogatory 2.

As an additional matter, much of the information that is provided in Adams’ answer to Interrogatory 2 concerns work performed by Bechtel & Cole for Adams. Nevertheless, Adams asserts that it “has no records concerning, the costs or expenses associated with these undertakings.” It seems safe to assume, however, that, since the work was performed by Bechtel and Cole, Bechtel and Cole would

have such records. Certainly Bechtel and Cole's accounting and billing records for work done for Adams are in Adams' control for purposes of this discovery. Adams should be ordered to produce such records.³

Interrogatory 11:

Describe with particularity your review of the videotapes, including the manner of the review, the equipment used for the review, and the number of hours and identification on the tapes of programming reviewed.

Adams' Response:

The complete text of Adams' response to Interrogatory 11 is attached hereto.

Argument:

While Adams does provide a lengthy response to this Interrogatory, it does not identify the "equipment used for review," nor does Adams object to providing such information. Adams should be ordered to provide this information.

Interrogatories 4 and 9

In its answers to these Interrogatories, Adams asserts that, in Mr. Gilbert's visits to Reading, Pennsylvania, he interviewed "numerous" people about Station WTVE, "including a representative of the Reading Eagle," the local newspaper. The implication is that this "representative" of the local newspaper is an authoritative source, yet he or she is not identified in any manner – for all we know this was a 10 year old delivering papers on her bicycle. As set forth, these references are evasive

³ No assertion of privilege has been made to such records. Accordingly, even if such records were privileged, which they are not, any such claim of privilege has been waived.

and Adams should be ordered to provide a complete identification of this person (at least as complete as Mr. Gilbert can recall – male/female? Some sort of physical description, age, weight, height, hair color? Job title or description -- editor, reporter, janitor, newspaper boy?)

CONCLUSION

For the foregoing reasons, RBI respectfully requests that this Motion be granted and Adams ordered to fully answer RBI's Interrogatories and respond to Requests for Production of Documents.

Respectfully submitted,

READING BROADCASTING, INC.

By:


Thomas J. Hutton
C. Dennis Southard IV
Its Attorneys

Holland & Knight LLP
2100 Pennsylvania Ave., NW
Suite 400
Washington, DC 20037-3202
(202) 955-3000

April 26, 2000

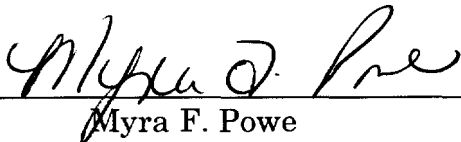
CERTIFICATE OF SERVICE

I, Myra F. Powe, an employee of the law firm of Holland & Knight LLP, do hereby certify that on April 26, 2000, I caused a copy of the foregoing Reading Broadcasting, Inc.'s Interrogatories Directed To Adams Communications Corporation to be hand delivered as follows:

The Honorable Richard L. Sippel
Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W., Room 1-C864
Washington, D.C. 20554

James Shook, Esq.
Enforcement Bureau
Federal Communications Commission
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Washington, D.C. 20554

Gene A. Bechtel, Esq.
Henry F. Cole, Esq.
Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 250
Washington, D.C. 20036
(Counsel for Adams Communications Corporation)



Myra F. Powe

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Please Date Stamp & Return
To Holland & Knight LLP

In re Applications of)	MM Docket No. 99-153
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ADAMS COMMUNICATIONS)	File No. BPCT-940630KG
CORPORATION)	
)	
For Construction Permit for a)	
New Television Station On)	
Channel 51, Reading, Pennsylvania)	

RECEIVED
APR 3 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Administrative Law Judge Richard L. Sippel

**READING BROADCASTING, INC.'S
AND ENFORCEMENT BUREAU'S
REQUESTS FOR PRODUCTION OF DOCUMENTS
DIRECTED TO ADAMS COMMUNICATIONS CORPORATION**

Reading Broadcasting, Inc., by its counsel, pursuant to Sections 1.311 and 1.325 of the Commission's Rules, requests that Adams Communications Corporation produce, in accordance with the instructions and definitions below, at the law offices of Holland & Knight LLP, 2000 K Street, N.W., 2nd Floor, Washington, D.C., 20037, the documents requested herein. Counsel for the Enforcement Bureau of the Federal Communications Commission advises Reading Broadcasting, Inc. that it concurs in these requests and asks that a copy of the

documents be produced concurrently to James W. Shook, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-A463, Washington, DC 20554.

INSTRUCTIONS

A. The singular form of a noun or a pronoun includes within its meaning the plural form of the noun or pronoun so used, and vice versa; the use of the feminine form of a pronoun includes within its meaning the masculine form of the pronoun so used, and vice versa; and the use of any tense of any verb includes within its meaning all other tenses of the verb so used.

B. These Requests are of a continuing nature and you are required to serve supplemental responses if you obtain or become aware of additional or different information after the date of your initial response.

C. As used herein, the words "and" and "or" shall not be interpreted to exclude any information otherwise within the scope of any Request.

D. For any document you withhold because of a claim of privilege or other protection, state:

- (a) the reason for withholding the document; and
- (b) a brief description of the document, including:
 - (i) the date of the document;
 - (ii) the name(s) of its author(s) and an identification by employment and title of each such person;
 - (iii) the name of each person to whom the original or copies of the document were sent, or had access to or custody of the document, together with an identification of each such person; and

- (iv) the subject matter of the document.

DEFINITIONS

Unless negated by the context of the specific Request, the following definitions shall apply:

1. The words "you", "your", and "Adams" refer to Adams Communications Corporation to whom these Interrogatories are addressed, including, but not limited to, the officers, employees, servants, agents (including but not limited to current or former attorneys, engineers and realtors), representatives, and assigns of Adams, whether before or after the incorporation of Adams.

2. As used herein, the term "document" means any written, recorded, photographic, graphic or other tangible matter, however produced or reproduced, and includes all electronically stored data accessible through computer or other information retrieval systems or devices. The term "document" includes the complete original document, all drafts, whether or not they resulted in a final document, and all non-identical copies thereof (including copies that by reason of subsequent modification of the copy by the addition of notations or other modifications, are no longer identical.) Documents covered by this discovery request include, but are not limited to: letters; memoranda; reports; contracts and other agreements; invoices; receipts; records or account; ledgers; spreadsheets; studies; plans; notebook entries; calendars and diaries; minutes, records, and transcripts of conferences, meetings, telephone calls, or other communications; publications and unpublished speeches and articles; typed and handwritten notes; electronic mail; facsimiles (including the header showing the receipt date and time);

telegrams; telexes; tabulations; diagrams, graphs, charts, blueprints, and other drawings; technical plans and specifications; advertising, product labels, and packaging materials; photographs, slides, microfilm, microfiche, and other copies or reproductions; film, audio and video tapes; tape, disk, or other electronic or magnetic recordings; and computer printouts.

3. As used herein, the term "concerns or relates to" means, in whole or in part, addressing, analyzing, constituting, containing, commenting on, discussing, describing, identifying, referring to, reflecting, reporting on, stating, dealing with, or in any way pertaining to.

4. As used herein, "WTVE" refers to Station WTVE(TV), Channel 51, Reading, Pennsylvania.

REQUESTS

1. Every document that concerns or relates to research conducted by you prior to filing your application in this matter as to potential construction permit applications in competition with license renewal applications for television stations broadcasting "home shopping" programming.

2. Every document that concerns or relates to your efforts prior to filing your application in this matter to prepare a potential application (including, but not limited to, efforts to locate sources of potential programming, financing, studio sites and transmitter sites) for a television construction permit (other than in Reading, Pennsylvania).

3. Every document that concerns or relates to an undertaking by you prior to filing your application in this matter to determine the public interest and needs of the Reading, Pennsylvania community.

4. Every document that concerns or relates to an undertaking by you prior to filing your application in this matter to determine whether WTVE's programming addressed the public interest and needs of the Reading, Pennsylvania community.

5. Every document that concerns or relates to an undertaking by you prior to filing your application in this matter to review and analyze WTVE's programming.

6. Every document upon which you rely for, or that you contend supports, your conclusion prior to filing your application in this matter that WTVE's programming was not addressing the public interest and needs of the Reading, Pennsylvania community.

7. Every document that concerns or relates to the videotape recordings of WTVE's programming that you commissioned prior to filing your application in this matter.

8. Every document that concerns or relates to your review of the videotapes.

9. Every document that concerns or relates to your comparison of the videotapes you were provided against WTVE's actual programming.

10. Every document upon which you rely for, or that you contend supports, your conclusion that the programming recorded on the videotapes that you were provided was substantially the same as WTVE's actual programming.

11. Every document that concerns or relates to an undertaking by you prior to filing your application in this matter to determine the public interest value of "home shopping" programming.

12. Every document that concerns or relates to an undertaking by you to challenge, contest, oppose, or otherwise object to "home shopping" programming.

13. Every document that concerns or relates to the preparation of your application for the Reading, Pennsylvania construction permit, including, but not limited to:

a. all bank letters, financial commitments (including balance sheets provided by shareholders of Adams) and other financial documents (including, but not limited to, capital calls, capital contributions, loans, or other sources of financing) with the dollar amounts unexpurgated;

b. all budgets, draft budgets and documents used or relied upon in preparing such budgets and draft budgets;

c. all documents relating to the transmitter site proposed in your application or in any other potential transmitter site considered for the application;

d. all documents relating to any potential studio site considered for the application;

e. all documents relating to staffing and/or recruitment sources for the proposed station; and

f. all drafts of the application and documents concerning or relating to such drafts.

14. Every document that concerns or relates to the value or potential value of WTVE or the proposed television station or construction permit in Reading, Pennsylvania, or a potential settlement of this proceeding.

15. Every document identified in response to Reading Broadcasting Inc.'s Interrogatories Directed to Adams Communication Corporation.

READING BROADCASTING, INC.

By: Thomas J. Hutton
Thomas J. Hutton
C. Dennis Southard IV
Its Attorneys

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April 3, 2000

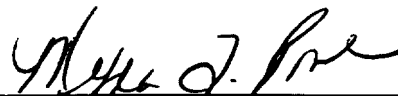
CERTIFICATE OF SERVICE

I, Myra F. Powe, an employee of the law firm of Holland & Knight LLP, do hereby certify that on April 3, 2000, I caused a copy of the foregoing Reading Broadcasting, Inc.'s and Enforcement Bureau's Requests For Production Of Documents Directed To Adams Communications Corporation to be hand delivered as follows:

The Honorable Richard L. Sippel
Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W., Room 1-C864
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Myra F. Powe